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Report on the activities of the Office of Internal Oversight Services

Audit of procurement management in the Secretariat

Report of the Office of Internal Oversight Services*

"A more clearly defined governance structure, a comprehensive strategy, and reliable management information systems are needed for the effective management and oversight of United Nations procurement"

Summary

The Office of Internal Oversight Services (OIOS) conducted an audit of procurement management in the Secretariat in order to assess whether the systems and internal controls related to the areas of governance, strategy, the procurement process and information were adequately designed and implemented in a manner that ensures the efficient and effective use of United Nations resources. The audit focused on the activities of the Procurement Division at Headquarters for the period 2006-2008. It also reviewed the status of the reforms initiated since 1995. The Procurement Division is the focal point for the procurement reform and is responsible for the major part of the United Nations procurement activities.

The audit concluded that in order to improve procurement management in the Secretariat, a number of critical risks need to be addressed, particularly in the areas of implementing procurement reform, formulating a comprehensive procurement strategy and developing an effective information and communications technology (ICT) infrastructure. The key audit results are summarized below:

* The delay in submitting the present report was due to the Department of Management's late response to the report.

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- Procurement reform has been ongoing since 1995. The current reform initiative started in 2006 as per the Secretary-General's proposal in an addendum to his report entitled "Investing in the United Nations: for a stronger Organization worldwide: detailed report" (A/60/846/Add.5 and Corr.1). The Procurement Division has made progress in implementing the stated reform activities, particularly in training staff involved in procurement activities and updating the Procurement Manual. However, in the opinion of OIOS, not all of the activities that were deemed as procurement reform can be considered real reform

- Certain critical reform activities still need to be implemented, including the procurement governance structure, the bid protest system, the Enterprise Resource Planning system, and the ethics guidelines. For example, the governance structure for procurement by field missions was still unclear, which leads to inadequate monitoring of field procurement

- The delegation of authority to the Procurement Division for high-value procurement needs to be reviewed for short-term logistics and transportation contracts (air and ship charter), which are exempt from review by the Headquarters Committee on Contracts for awards of up to $5 million. The compensatory control to review them on an ex post facto basis was not established

- Annual procurement increased from $2.1 billion in 2006 to $3.3 billion in 2008. The major increase was due to the increase in the number and the size of field missions. No comprehensive procurement strategy involving senior management has been documented, although an ad hoc strategy was being managed at a working level. A proper procurement strategy, involving the collaboration of the major participants, in particular the Procurement Division and the Department of Field Support, is needed in order for the procurement process to become more efficient and effective. *The Department of Management stated that, given the unanticipated surge in peacekeeping requirements, the adopted strategy was of necessity ad hoc in nature. The strategy succeeded and resulted in the timely procurement of goods, equipment and services.*

- The lack of a formal and comprehensive procurement strategy led to frequent situations where decisions to enter into or extend certain contracts were not, or could not, be fully explained, and contract awards were expedited or approved on an ex post facto basis without valid justification. It had also limited the Organization's ability to properly use the various contract types to leverage economies of scale and to improve delivery of goods and services. Procurement actions appeared to be ad hoc and at times ineffective and not in the best interests of the United Nations

- The Procurement Division lacked an ICT infrastructure that adequately supports its operations and control environment. Various control weaknesses were identified, such as limited validation controls and unreliable date fields, which could expose the Organization to system vulnerabilities and risks of unreliable data. Procure Plus, the procurement application system, did not contain automated controls with predetermined limits or thresholds to trigger exceptions. As a result, the Procurement Division could not monitor, query and analyse procurement data in a systematic manner to identify potential risks and cases of non-compliance with United Nations Regulations and Rules

- United Nations staff involved in procurement expressed general satisfaction with the Procurement Division's performance. However, the Division had not developed key performance indicators to compare performance from one period to another and identify areas for improvement

OIOS made a number of recommendations to address these as well as other issues summarized in the present report.

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I. Introduction

1. The Office of Internal Oversight Services (OIOS) conducted an audit of procurement management in the Secretariat (AH2008/513/01). The audit covered areas of strategy, governance, the procurement process, and information resources in order to assess whether the related systems and internal controls were adequately designed and implemented in a manner that ensures the efficient and effective use of resources. It also reviewed the status of procurement reform initiated since 1995. The table below shows that in both 2006 and 2007, the volume of United Nations procurement was over $2 billion and that in 2008 it surpassed $3 billion. The Procurement Division at Headquarters undertakes or reviews most of the United Nations procurement activities and is the focal point for the procurement reform.

Trend in procurement value from 2006 to 2008

(In United States dollars)

Category	*2006*	*2007*	*2008*
Headquarters	808 731 282	972 837 033	1 740 212 928
Local procurement by field missions	1 182 905 582	931 421 058	1 432 059 038
Offices away from Headquarters	134 231 943	230 184 690	160 448 762
Total	**2 125 868 807**	**2 134 442 781**	**3 332 720 728**

2. At the conclusion of the audit, OIOS issued a draft report to the Department of Management containing 39 recommendations, 25 of which were made to mitigate high-risk areas. The Department rejected 19 recommendations, including 13 which addressed high-risk areas. OIOS reiterates the rejected recommendations and requests the Department of Management to reconsider them. The present report summarizes the key findings and recommendations of the detailed OIOS report to the Department of Management. The Department's comments are shown in *italics*. The recommendations of OIOS to mitigate high-risk areas are summarized in the annex to the report.

II. Governance

3. Procurement governance includes attributes such as the leadership of senior management, the establishment of appropriate processes and structures to inform, direct, manage and monitor procurement activities, and the promotion of an ethical culture to support economical procurement. The audit found that the definition of procurement reform needed to be clarified to streamline reform management. The procurement governance structure also needed to be further defined to improve oversight of procurement activities. In particular, the terms of reference of the Headquarters and Local Committees on Contracts (HCC/LCC) and the framework for monitoring local procurement by field missions were unclear, which could have an impact on the operations and reputation of the Organization.

A. Need to distinguish between reform initiatives and other improvements

4. In 1994, the General Assembly requested the Secretary-General to submit proposals for improving the procurement activities of the Secretariat by means of: (a) amendments to the United Nations Regulations and Rules to address conflict of interest issues; (b) reinforcement of the Committee on Contracts and greater transparency in its operations in respect of the granting of exceptions to the requirement for competitive bidding; (c) improved monitoring of contract compliance and strengthening of the penalty clause for non-compliance; and (d) strengthening the procurement-planning capacity of the Secretariat.

5. Since then, procurement reform has been an ongoing exercise mandated by the General Assembly in approximately 15 resolutions covering the whole spectrum of procurement activities. The Procurement Division has been requested to report regularly to the General Assembly on the status of the reforms in addition to responding to specific requests from the General Assembly.

6. In 2006, an addendum to the report of the Secretary-General entitled "Investing in the United Nations: for a stronger Organization worldwide: detailed report" (A/60/846/Add.5 and Corr.1) gave further prominence to procurement reform as a major initiative. The Secretary-General proposed to take concrete measures to improve and reform procurement in the Secretariat and field missions in the areas of: (a) the strengthening of internal control measures; (b) optimization in acquisition and procurement management; and (c) strategic management of procurement. In view of the current and anticipated workload, the Procurement Division resources were not sufficient to effectively meet the medium- and long-term requirements of the Organization. The Secretary-General therefore requested additional financial and human resources and the upgrading of the Procurement Service to a division.

7. The deadline set by the General Assembly to complete the most recently requested reforms was June 2008. The Procurement Division indicated that as at 31 December 2008, the overall implementation rate of the reforms was 85 per cent. The Division stated that it did not have the capacity to implement certain reforms in a timely manner and thus could achieve only limited progress. Although the Division has taken steps to implement the resolutions of the General Assembly on procurement reform, some reforms are still not complete, including the governance structure, the Bid Protest System, information technology (IT) reform, and the issuance of the ethics guidelines, all of which are critical to improve governance and accountability in procurement. *The Office of Central Support Services stated that the vendor Bid Protest System was at its last stage of implementation and the IT reform was ongoing through the development of the Enterprise Resource Planning (ERP) system. In addition, the Procurement Division has provided training and guidelines on ethics and integrity to staff involved in the procurement process at Headquarters, offices away from Headquarters and field missions, and has drafted ethics guidelines that will be promulgated by the Ethics Office, which has overall jurisdiction for the establishment of ethical standards within the Secretariat.*

8. OIOS notes that not all measures that were characterized by the General Assembly and consequently by the Department of Management as procurement reforms over the past 14 years should be considered real reform. Reform may be

defined as an action which fundamentally changes an existing structure. For example, the Procurement Division was requested by the General Assembly to clean up the vendor database in 1995. This and any subsequent revisions to the database should be considered regular operations; however, such actions were still categorized as reform by the Department of Management. Similarly, training, which was included as part of procurement reform in 1997, is part of management's regular responsibilities. OIOS is of the opinion that it is important to distinguish between reform and other improvements which are part of management's regular responsibilities for maintaining efficient daily operations. Oversight of the procurement reform activities involves the Secretary-General and the General Assembly, whereas regular management activities are primarily monitored at the programme management level. Thus, distinguishing between the two types of activities would allow the Secretary-General and the General Assembly to focus on relevant reform issues to improve the planning, budgeting, monitoring and accountability for procurement. It would also help to rationalize the workload of the Procurement Division, by limiting the Secretary-General's reports to the General Assembly to those dealing with real procurement reform activities, while maintaining the level of discretion accorded to the Secretary-General to manage the other improvements of the Secretariat.

9. OIOS did not make a recommendation to address this governance risk because the Department of Management was in the process of reporting on procurement governance as requested by the General Assembly and as discussed in the following paragraph.

B. Delegation of authority and organizational structure

1. The delegation of authority system needs to be effectively implemented

10. In 2005, the General Assembly, in its resolution 59/288, requested the Secretary-General to provide information on new delegations of authority, including the mechanisms used to strengthen effective monitoring, oversight and accountability. In 2007, in its resolution 61/246, the General Assembly also requested a comprehensive report on procurement governance, which at the time of the present audit had still not been submitted. In its resolution 62/269, the General Assembly reiterated that request. The Department of Management informed OIOS that the draft report to the Assembly was being discussed between the Department of Management and the Department of Field Support but did not share it with OIOS. OIOS found that several changes in the delegation of authority had taken place since 2005; however, the change process had not been supported by required procedures and resources to ensure that the revised delegation of authority system was adequate and effectively implemented.

11. According to financial rule 105.13, the Under-Secretary-General for Management is responsible for the procurement functions of the United Nations. Pursuant to administrative instruction ST/AI/2004/1 on the delegation of authority under the Financial Regulations and Rules of the United Nations, this procurement authority is delegated to the Assistant Secretary-General for Central Support Services. Procurement actions are conducted with the approval of the Assistant Secretary-General for Central Support Services or the officials delegated by him or her. The Procurement Division conducts all procurement for Headquarters, field

missions, the regional commissions and the international criminal tribunals above the delegated authority limits. The United Nations offices at Geneva, Vienna and Nairobi have had unlimited delegation of procurement authority since the issuance of administrative instruction ST/AI/2004/1 on 8 March 2004. The Assistant Secretary-General for Central Support Services has also delegated limited procurement authority to the Under-Secretary-General for the Department of Field Support to execute local procurement in the field.

12. A major part of procurement is done locally at field missions ($1.4 billion, or 43 per cent of total procurement in 2008). Prior to 2005, the Office of Central Support Services issued delegations of authority directly to field missions. However, since 2005 the Assistant Secretary-General for Central Support Services has delegated authority to the Under-Secretary-General for the Department of Peacekeeping Operations (subsequently Department of Field Support), who in turn has further delegated procurement authority to the Director/Chief of Mission Support in field missions. The Procurement Division does not monitor local procurement in field missions, except for those cases which require HCC review.

13. The Assistant Secretary-General for Central Support Services has given a higher level of delegated authority (up to $5 million) to the Director of the Procurement Division in two areas: (a) contract amendments related to the Capital Master Plan; and (b) award of short-term logistics and transportation (air and ship charter) contracts, except for sole bid cases. Cases relating to these delegated areas have been exempted from HCC review without establishing any mechanism to review them on an ex post facto basis. In the case of Capital Master Plan contract amendments, the Office of Programme Planning, Budget and Accounts had agreed to establish a committee to review these cases on an ex post facto basis, for monitoring and lessons learned. However, this committee had not yet been established. In the case of short-term logistics and transportation contracts, there was no plan to establish a review mechanism at the time of the audit.

14. The Procurement Division is required to submit a quarterly report to the HCC and the Office of Central Support Services on short-term logistics and transportation (air and ship charter) contracts. The Division stopped submitting these reports after August 2007. OIOS reviewed these reports for the period August 2006 to August 2007 and found a total of 156 cases with contract amounts ranging from $207,500 to $2,558,370, totalling $105 million.

15. *The Office of Central Support Services stated that the post facto reports had not been provided recently, primarily owing to staffing constraints and the high workload owing to the procurement requirements for new missions. Efforts are being made to correct this reporting gap and reporting should be up to date by mid-August 2009.* In the opinion of OIOS, the lack of an independent review mechanism for these cases and the lack of timely reporting do not ensure that strategies are reviewed and revised when needed. OIOS noted that 92 of the 108 air charters were for troop rotations. OIOS is of the opinion that with proper planning, the air charter contracts could be arranged through the normal bidding process, as the troops' rotation dates are known in advance and thus are not urgent requirements.

16. *OCSS noted that the Revised Procedure for Approval of Short-Term Logistics and Transportation Requirements has proven to be very successful, by significantly cutting down processing times. Ex ante internal controls are in place in the form of an independent review of all proposed awards under this procedure conducted by*

the office of the Director of the Procurement Division (as awards are signed by the Director of the Division, and not, as in other cases by the Chief of the Procurement Operations Service). In addition, post facto reports are required to be submitted for review to the HCC/Assistant Secretary-General for Central Support Services. Furthermore, of the number of cases OIOS analysed from the reports submitted, 96 per cent were awarded on the basis of "lowest cost bid/proposal" or on the basis of "lowest substantially conforming bid" or "qualified, most responsive proposal". There has not been a single case of bid protest and only in one case, involving a ship charter, did the Procurement Division receive a formal inquiry from a vendor to clarify the award. OIOS points out, however, that there is a lack of an independent review of those cases, since HCC does not review the cases, even on an ex post facto basis.

2. Need to monitor procurement activities

17. The Procurement Division has not developed key performance indicators to measure its performance. Such performance indicators could help the Division to monitor its performance by providing a basis for comparing one period to another and identifying areas for improvement. *The Office for Central Support Services stated that a related recommendation was previously made by the Board of Auditors and that the Procurement Division was in the process of hiring a consultant to develop a monthly scorecard on performance indicators, which would be used to measure the Division's performance and hence lead to reduced processing time and increased client satisfaction.*

18. OIOS identified several areas that could benefit from more effective monitoring by Procurement Division. For example: (a) the average time for the Division to submit peacekeeping procurement cases to HCC was 42 days in 2008, but as of 8 January 2009, six ex post facto cases had been pending submission to HCC for more than one year; (b) there was no data available for the period January 2006 to September 2008 on cases exempted from competitive bidding under financial rule 105.16 which were below the HCC threshold; (c) the Division did not maintain statistics on the number of contracts that could not be re-bid in a timely manner nor how much procurement was done on an ad hoc basis when no valid systems contract existed; and (d) the Division also did not keep a database of cases referred to the Office of Legal Affairs, which may have resulted in repetition of requests on similar issues, lack of institutional memory of that Office's advice, and the inability to track the time taken by the Office of Legal Affairs to provide advice.

19. *The OCSS stated that the Contracts Officer appointed in October 2008 maintains a database of cases referred to the Office of Legal Affairs. The centralization of legal matters within the Planning, Compliance and Monitoring Section has led to the creation of a central database for legal matters in the Procurement Division and the creation of legal precedents which will provide guidance for the proper resolution of similar or identical cases in the future.*

20. One major issue the Procurement Division brought to the attention of OIOS during the present audit was the inadequate staffing level in various sections. Since the Division did not compile any reports on workload or performance indicators to facilitate monitoring of the efficiency of procurement actions and appraisal of staff performance, it was difficult to assess the adequacy of the staffing level. *The Procurement Division indicated that the sections' activities were monitored through*

regular staff meetings as well as through the Requisition Tracking System, although its usefulness may be limited because it was not always updated. The Division also monitored activities through a series of automated reports, which covered a wide range of issues in the procurement process. Reports were issued monthly to various recipients, ranging from the Director to the individual teams, whose responsibility it was to take action. However, OIOS could not confirm if appropriate action was taken as there was no written documentation on any action taken to rectify exceptions.

21. The General Assembly, in its resolution 55/247, requested the Secretary-General to ensure that field missions had the capacity to perform procurement functions properly and that Headquarters had effective mechanisms to monitor field procurement. The Procurement Division advised, however, that owing to the lack of staff resources, it conducted only 11 monitoring visits to field missions between 2007 and 2008. *The Office of Central Support Services stated that the funding received by the Procurement Division to conduct management reviews permitted the Division to visit just a small number of missions. In 2008, the budget for conducting management reviews was only $96,000, thus limiting the number of reviews conducted. The Division is currently preparing proposals for an enhanced budget for staff and travel.*

3. Need for clear terms of reference and reporting lines for committees on contracts

22. United Nations financial rule 105.13 (b) states that the Under-Secretary-General for Management shall establish review committees at Headquarters and other locations to render written advice on procurement actions. The terms of reference of HCC and LCC have not been defined in an administrative instruction. In the absence of clear terms of reference, the scope and objectives of the committees' review may be subject to different interpretations. The Procurement Manual describes the functions of these committees; however, it does not address certain issues such as to whom the committees are accountable. For example, it is unclear to whom LCC is accountable: the Director/Chief of Mission Support of field missions or to the Director/Chief of Administration at offices away from Headquarters, or to the Office of Central Support Services, or HCC. The Office of Central Support Services stated that as a part of the proposal to increase the HCC threshold, there was a plan that HCC would monitor LCC functions. However, this has not been implemented although the threshold for HCC review was increased from $200,000 to $500,000 as of August 2008. *HCC stated that while it provides independent advice to the Assistant Secretary-General for Central Support Services, the HCC secretariat is functionally responsible to the Under-Secretary-General for Management. Generally, all sections related to mission support or administration report to either the Chief of Administrative Services or the Chief of Integrated Support Services, whereas LCCs advise the Director/Chief of Mission Support, but do not report to him or her.*

III. Strategy

23. Although the Secretariat's annual total procurement exceeded $3 billion in 2008, it was being managed without a formal, comprehensive procurement strategy.

This could result in adverse business decisions, improper implementation of decisions and a lack of responsiveness to changes in the external environment. This could, in turn, expose the Secretariat to lower than expected programme and financial performance, and to reputation risks. OIOS considers the lack of strategic planning in procurement a high risk for the Secretariat. *The Office of Central Support Services stated that planning is the responsibility of the requisitioner. Furthermore, management asserted that the Procurement Division's strategy is constantly reviewed and modified in order to effectively respond to the dynamic nature of the global commercial environment and the dynamic nature of peacekeeping operations.*

A. Need for greater involvement by senior management in the procurement process

24. Financial rule 105.12 describes the general principles of procurement functions of the United Nations which are: best value for money; fairness, integrity and transparency; effective international competition; and the interest of the United Nations. Achieving these principles requires a comprehensive strategy based on an understanding of the requirements of the United Nations, its internal resources and the market of goods and services. To ensure buy in and accountability at the appropriate levels of responsibility, the strategy should be documented and approved by the senior officials responsible for establishing the requirements, as well as those in charge of procurement, namely the Assistant Secretary-General for Central Support Services and the Director of the Procurement Division. *The Office of Central Support Services stated that the Mission Statement of the Procurement Division highlights its overall strategy: "To provide responsive, effective and quality procurement services and expert business advice to United Nations Headquarters, peacekeeping missions, and offices away from Headquarters, while achieving best value for money and ensuring a competitive, fair and transparent process in accordance with established regulations, rules and procedures".*

25. In the view of OIOS, an effective strategy should clearly articulate the major procurement activities and execution strategies to be followed, including how to approach complex contracts, increase vendor participation in those commodities where competition has been historically low, and use systems contracts to the Organization's advantage. The strategy should also consider various options for major procurements to achieve economy and efficiency. The Logistics Support Division of the Department of Field Support stated that although no formal meetings were held for procurement planning, it had recently initiated fortnightly meetings with the Procurement Division to address the most important pending procurement issues.

26. *The Office of Central Support Services explained that the Procurement Manual emphasizes early planning of requirements by the requesting office as being essential to an effective procurement action. It further stated that the Procurement Division does in fact have specific strategies for commodity groups such as fuel and food. The introduction of the Source Selection Plan provides the opportunity to define a customized execution strategy for each complex procurement activity, taking account of the Organization's requirements and external factors such as market conditions. During the preparation of the Source Selection Plan, the Procurement Division and the requisitioner also consider various sourcing*

methodologies and options so as to achieve best value for money. OIOS recognizes that the Procurement Division has implemented since 2008 the Source Selection Plan, which defines a procurement strategy for each procurement action at the stage of issuance of solicitation document. However, the Source Selection Plan is prepared at the execution stage, whereas the strategy should be prepared in advance on a broader level and guide the procurement actions that follow.

27. The involvement of senior managers is essential to ensure that the procurement strategy is closely aligned to programme goals. While the current practice of managing procurement at the working level reflects the need for effective management of operational risks such as the application of best value for money, it does not ensure that risks are managed strategically. As illustrated in the following paragraphs, the lack of a formal and comprehensive procurement strategy led to frequent situations where decisions to enter into or extend certain contracts were not, or could not be, fully explained, and contract awards were expedited or approved on an ex post facto basis without valid justification. It had also limited the Organization's ability to properly use the various contract types to leverage economies of scale and to improve delivery of goods and services. Procurement actions appeared to be ad hoc and at times ineffective and not in the best interests of the United Nations.

B. Need for a strategy to reduce contracts awarded without competition and ex post facto/partial ex post facto cases

28. Three contracts for the African Union-United Nations Hybrid Operation in Darfur (UNAMID) with a total value of $789 million were not awarded on a competitive basis: (a) a multifunction logistics contract for $150 million on a sole-source basis (see A/63/668); (b) a fuel contract for $507 million through negotiation with the vendor, which was originally approved for $57 million in a previous bidding; and (c) a rations contract for $69 million subsequently increased to $132 million, based on a single bid received out of four vendors that were invited and given only 17 days' notice to bid. *The Office of Central Support Services explained that the contracts were not competitively bid mainly because the Procurement Division had to arrange the contracts within a tight deadline.*

29. Furthermore, data provided by HCC revealed that from 2006 to 2008 there were 158 ex post facto cases totalling $288 million and 155 partial ex post facto cases totalling $616 million. OIOS notes that the number of ex post facto cases has been reduced from 86 in 2007 to 49 in 2008. HCC expressed the opinion that many ex post facto cases could have been avoided if there had been proper planning, and commented that expedited approval (i.e., for urgent) cases in 2008 constituted 25 per cent of total "exceptional cases", thus indicating that the procurement process is under stress. *The Office of Central Support Services stated that the figures for HCC ex post facto and partially ex post facto cases appear to be overstated. Most cases reviewed by the HCC cover a period beyond the current year, most in fact are five-year contracts. In the opinion of OIOS, the contract duration does not matter because the analysis by HCC showed the trend on the basis of cases reviewed by the Committee in 2008.*

30. OIOS analysis of data provided by HCC showed that there were 54 sole bidder/proposal awards in competitive bidding exercises from 2006 to 2008

(excluding exigency cases). While the number of sole-bid awards had decreased from 19 in 2006 to 17 in 2008, the value of these contracts increased from $34 million in 2006 to $161 million in 2008.

31. In another 19 cases, contracts with a total value of $644 million were awarded without competition under "exigency" circumstances. OIOS reviewed 11 of the 19 cases and found that some cases could have been better managed by either avoiding the exigent circumstances or making the process more competitive through better planning. For example, in one case, the Controller cited poor planning by a requisitioning office, which resulted in exigent circumstances. In another case, there was a failure to proactively arrange a new systems contract in a timely manner. In still another case, vendors were given only one day's notice to respond to a bid, which effectively reduced competition.

32. In the opinion of OIOS, the Office of Central Support Services should analyse the reasons for the high number of ex post facto and exigency cases and include in the overall procurement strategy specific actions to minimize exceptions to competitive procedures. *The Office of Central Support Services stated that it could not do this relative to ex post facto cases, because the Procurement Division and the Department of Field Support, in compliance with the Procurement Manual and the memorandum issued by the Controller on 15 September 2005, cannot submit ex post facto cases from field missions to HCC for review unless a memorandum supporting the reasons for the ex post facto circumstance is received from the Under-Secretary-General for the Department of Field Support. Furthermore, the incidence of ex post facto cases is linked to the timeliness of submission of requisitions.* OIOS acknowledges the effort of the Office of Central Support Services in this regard but is of the opinion that further efforts are needed to reduce the still large number of cases, for example, by closely monitoring the ex post facto and exigency cases and holding officials accountable if they have not taken adequate steps to avoid or reduce the number of such cases. *The Office of Central Support Services further stated that procurement strategy is dependent upon the existence of an effective requisitioning strategy and the preparation of comprehensive and high quality specifications, which are communicated to the Procurement Division in a timely manner. In this regard, it should be noted that the Ernst & Young Risk Assessment done in 2008 stressed the importance of the requisitioning process to the conduct of procurement in the best interest of the Organization.*

C. Need for a documented strategy to increase vendors/contracts from developing or transitioning economies

33. OIOS did not find a documented strategy for improving geographical vendor representation linked to specific commodities or regions where the United Nations operates. However, although the distribution of awards for regular and systems contracts in effect from 2006 to 2008 weighed heavily in favour of developed economies, that is, 82 per cent compared to 18 per cent from developing or transitioning economies, vendors from developing or transitioning economies were obtaining slightly more contracts in recent years (33 per cent of newly established contracts in 2007, and 26 per cent in 2008). In terms of contract value, vendors from developing or transitioning economies obtained 30 per cent of the contract value of newly established contracts in 2006, increasing to 33 per cent in 2008, against 70 per cent and 67 per cent respectively, to vendors from developed countries. *The*

Procurement Division stated that it could not develop a strategy to improve participation by vendors from developing or transitioning economies because it contravened the United Nations Regulations and Rules on international competition and the interest of the Organization. OIOS noted, however, that the Procurement Division has conducted business seminars to promote doing business with the United Nations. OIOS is of the opinion that the Division could further develop such mechanisms as part of a strategy to improve geographical vendor representation, without contravening the relevant regulations and rules.

34. *The Procurement Division stated that it fully utilized reasonable means to improve participation by vendors from developing or transitioning economies while complying with the United Nations Financial Regulations and Rules. During business seminars, potential vendors from such countries were routinely informed about locally produced commodities that may be purchased at competitive rates by field missions. Further, the Procurement Division wished to note that an overly aggressive strategy to increase developing or transitioning countries' participation would not only contravene the Financial Regulations and Rules, but would also potentially result in price escalation in weak, post-conflict local economies. For instance, in some peacekeeping locations it had been reported that United Nations procurement of items such as fresh fruit and vegetables has resulted in price increases that adversely affected the local population.*

D. Need to analyse concentration of vendors to optimize the Organization's interest

35. OIOS did not find documentation showing that the Procurement Division had analysed its relationships with top contractors and assured itself that these relationships were optimized in the Organization's interest. Regular and systems contracts placed with the top 20 United Nations contractors represented 51 per cent of the total not-to-exceed (NTE) amount of contracts in the period 2006-2008. The resulting concentration of suppliers presents both operational and financial risks of dependence on these suppliers. For example, one vendor providing mainly long-term air charters was awarded 31 contracts, or 19 per cent of the NTE amount of all regular contracts ($845 million out of $4.4 billion). Conversely, this concentration may present opportunities for efficiency owing to the repeated nature of the contracts, and savings owing to economies of scale.

E. Need to analyse vendor responses to ensure effective competition

36. Section 9.3.4 of the Procurement Manual suggests the minimum number of vendors to be invited to participate in a solicitation exercise at between 5 and 25, depending on the anticipated value of the acquisition. The Manual is silent on the minimum number of bid submissions that should always be evaluated to ensure that effective competition has occurred. The Procurement Division staff did not always populate the data field in the Procure Plus system, which captures the total number of vendors who responded to bids; thus, data on bid response cannot be readily analysed by the Division's management or reported to relevant stakeholders. The level of responses could not be determined across the Division since information on bidder participation was not uniformly captured in the bid processing system. *The*

Procurement Division stated that it could not require data input into Procure Plus of all bidders who responded and the amount of their bid because it lacked sufficient staff. Also, the potential benefits pending implementation of ERP did not appear to justify the cost associated with an increase in staff.

37. As the information on vendor responses was not available, OIOS reviewed eight procurement files and noted that the number of vendors responding to solicitation invitations was relatively low when compared with the number invited. Procurement Division staff attributed the low level of responses largely to vendors registering under commodity codes which are not directly related to their operations (as sometimes the codes are too broad), and to a high failure rate when sending out invitations owing to outdated vendor contact details. OIOS also noted that sometimes the time allowed for vendors to submit proposals or bids was extremely short. For example, in one case having an award value of $129 million, bidders were given only 16 days to submit their proposals.

38. OIOS also analysed vendor bidding data provided by the Procurement Division (1,972 bids) from 2006 to 2008. Four or fewer vendors were invited in 297 cases (15 per cent of the time), and only one vendor was invited in 197 cases (10 per cent of the time). Twenty-five or more vendors were invited for 539 bids. The majority of these cases (419) were in three commodity classes: airline management and operations, freight forwarding and shipping. The response rates for these commodities ranged from 2 per cent to 7 per cent. In the view of OIOS, the Procurement Division should know that most of the vendors it invites in these commodity classes do not or cannot meet the bid requirements, and needs to clarify why it continues to invite them since this gives the impression that there is wider competition than is really the case.

39. The Procurement Division has taken steps to expand the pool of potential vendors, including relaxing registration criteria for vendors seeking low-value contracts, conducting business seminars at several locations and registering new vendors. However, while 42 per cent of requisitioners surveyed by OIOS rated these efforts as fair or better, 40 per cent of them rated the efforts as poor or very poor. The Logistics Support Division expressed the view that the Procurement Division should take additional steps to ensure maximum participation of vendors in each solicitation exercise.

IV. Procurement process

40. Operational risks arise from inadequate, inefficient or failed internal processes. They are also the result of inadequate management information systems that do not allow for analysis of transactions for monitoring and change management purposes. OIOS identified several areas where operational risks in procurement had not been adequately managed and remained high.

41. OIOS conducted surveys to obtain the views of Procurement Division staff, chief procurement officers at field missions and offices away from Headquarters, and a sample of requisitioners on a variety of issues. The survey of Procurement Division staff aimed to assess their perception of the adequacy of internal controls, including the control environment, control activities, information and communications systems and practices, and monitoring activities. The survey of chief procurement officers covered the quality of guidance and assistance provided

by the Procurement Division and the effectiveness of the annual acquisition planning and management review exercises. The survey of requisitioners focused on their assessment of the services provided by the Division. Overall, all groups of respondents expressed general satisfaction with the performance of the Division relating to the topics covered by the surveys but also highlighted areas for improvement, some of the topics discussed below.

A. Procurement Manual

42. The Procurement Division maintains the Secretariat's Procurement Manual, the key document guiding procurement operations, and which describes the policies and procedures to be applied in the conduct of procurement activities. The Division first issued the Procurement Manual in 1998 and is currently working on the sixth version. A survey by OIOS indicated that users were largely satisfied with the adequacy of the Manual. However, they expressed the need for more step-by-step guidance on the practical implementation of policies. OIOS held a workshop with a cross-section of Procurement Division staff, who indicated that certain complex areas of the procurement process, for example, the application of the principle of best value for money and conducting negotiations, still remained a challenge. Insufficient procedures could lead to too much discretion being exercised in these areas resulting in a lack of consistency and fairness.

43. *The Office of Central Support Services stated that the Procurement Division was in the process of launching the Procurement Network on the Community of Practices website. The Division's objective is to utilize the Procurement Network as a procurement forum where important announcements, communication exchanges, key documents, information, and policy and procedure updates will be posted for full access by procurement staff. The Procurement Manual has been converted to a Wikipedia library format which, in effect, converts the Manual into a searchable database and facilitates the integration of, and e-links to, new policies, instructions, and standard operating procedures. Procurement staff from all duty stations will have access by Extranet or Internet to the new format and the ability to provide input to the Manual. The final Procurement Manual in Wikipedia will be published for official use in the fall of 2009.*

1. Need to improve reporting on commercial evaluations

44. Bid submissions are subject to technical and commercial evaluations as part of the procurement process. Prior to issuing solicitation documents to vendors, requisitioners are required to develop criteria for the evaluation of bid submissions, and to form a team of at least three members to evaluate the bids. The results of the technical evaluation are transmitted to the Procurement Division by e-mail or a memorandum. In contrast, the Procurement Manual does not set a formal requirement for a report on commercial evaluation of bids.

45. Commercial evaluations are generally conducted solely by the procurement officer responsible for the procurement action. No formal evaluation report is prepared detailing the assumptions made and the scenario on which the evaluations are based. Owing to the lack of consistent procedures among the various sections, OIOS could not determine whether these checks included confirming the financial information given in the annex against original bid documents and ensuring that all

bid documents received had been technically evaluated and, if found compliant, commercially evaluated. *The Office of Central Support Services stated that evaluation committees are formed to evaluate large contracts as evidenced by Capital Master Plan evaluations.* However, OIOS noticed that a procurement contract is frequently evaluated by one procurement officer.

2. Need to improve guidance on contract negotiations

46. Procurement officers conduct negotiations but receive limited guidance from the Procurement Manual. The Manual does not require procurement officials to prepare a written strategy indicating the goals of the negotiations, analysing the respective strengths and weaknesses of the positions of both the United Nations and the prospective vendor, and determining the preferred outcome and acceptable alternatives. OIOS found that a number of officers conduct pre-contract negotiations on their own, contrary to procurement policy, without any documented guidance from their supervisors. There was generally no documentation of what transpired during these negotiations but there were frequent references to "savings" that had been made. However, not having established any expectations beforehand, it was difficult to determine whether the outcome of the negotiation was the best possible result that could have been achieved. *The Office of Central Support Services stated that in order to improve the procurement outcome by reducing uncertainties, risk and costs, negotiations with vendors had to be approved by senior management following review of the case files by the relevant Committees on Contracts. Upon completion of negotiations, the results must be presented back to the concerned Committee and the savings identified.*

47. Furthermore, while the Procurement Manual provided for requisitioners to participate in negotiations, the Procurement Division did not always involve them even when the negotiated amount was significant.

B. Procurement planning

1. Need to improve acquisition planning

48. The mechanism for preparing an annual acquisition plan has not functioned effectively. The plan should identify procurement activities in order to achieve timely and cost-effective acquisition of goods and services. The requirements for field missions are still largely unplanned and processed on an ad hoc basis, which significantly reduced opportunities for efficient and effective procurement. Furthermore, the lack of documented guidance on contract implementation responsibilities dilutes accountability for the successful delivery of goods and services.

49. In its resolution 52/226 A the General Assembly requested the Secretary-General to ensure that all departments and offices at Headquarters and in the field develop, in cooperation with the Procurement Division, annual procurement plans, which should be made public. As stated in the memorandum issued by the Division in requesting the plans, "the projection of requirements ... substantially assists the Procurement Division in planning procurement activities and achieving the timely and cost-effective acquisition of goods and services". However, only eight departments in the Secretariat submitted acquisition plans for 2008.

50. In response to an OIOS survey question about the usefulness of the acquisition plan in planning procurement needs, the majority of the requisitioners surveyed at Headquarters (59 per cent) rated its usefulness positively. However, a significant number of respondents (27 per cent) rated its usefulness negatively. When chief procurement officers at field missions and offices away from Headquarters were asked a similar question, 40 per cent rated the usefulness of the acquisition plan as poor or very poor.

51. For 2008, the combined amount of departmental acquisition plans was $491 million, compared to $1.45 billion of actual requisitions, representing a variance of 195 per cent. The difference between the plans and actual requisitions was driven by the Departments of Peacekeeping Operations and of Field Support, whose acquisition plan indicated $312 million compared to actual requisitions of $1.16 billion, owing primarily to airline management and operations and freight forwarding where the plan had only $129 million against the requisition value of $672 million. In addition, the requisition of prefabricated buildings valued at $114 million was not included in the plan. *The Office of Central Support Services reiterated that acquisition planning is the responsibility of the requisitioner. The Procurement Division's annual acquisition plan is a forecast of the requirements communicated by the requisitioners and the Division will naturally procure any requirements that are subsequently communicated by the requisitioner, in accordance with the Division's mandate.*

52. The OIOS review of field mission acquisition plans revealed that there was no consistency in the classification of procurement categories, which led to a risk that some requirements could be left out. Some major cost components such as air transportation costs were not included in the acquisition plans for two missions, and fuel and rations supply costs were not included in the plans for two other missions. Furthermore, some large-value items did not provide any description of the items. In one plan, 47 items were termed simply as "Goods", including an item for $127 million and another for $40 million.

53. The Supply Section of the Logistics Support Division, which coordinates with field missions and other sections of the Logistics Support Division and submits the acquisition plan to the Procurement Division, acknowledged that the planning process needs improvement but stated that it had not received any feedback from the Procurement Division in this regard.

54. The Planning, Compliance and Monitoring Section receives and posts the acquisition plans to the Procurement Division's website but since they are not complete, neither the Division nor potential vendors have a realistic picture of the Organization's procurement needs. Ideally, the plan should be consolidated and a strategy developed to address major acquisitions and associated risks.

55. *The Department of Management stated that although the Procurement Division met with its primary clients to provide guidance throughout the acquisition planning process, acquisition planning was still the requisitioning offices' responsibility.* In the opinion of OIOS, the Procurement Division is ultimately responsible for procurement, and reliable and timely procurement planning is a critical element; therefore, the Department of Management should coordinate with those departments, which generate large-value requisitions, such as the Department of Field Support to ensure that acquisition planning covers all major projected requirements and also considers risks to achieving the plans.

C. The vendor roster needs to be expanded

56. The Procurement Division has taken the initiative to clean up its vendor database and has also implemented revised vendor registration criteria and a fully online registration process via the United Nations Global Marketplace (UNGM). In preparation for the ERP system, the Procurement Division intended to complete the cleaning and updating of data by 31 December 2008. According to the Procurement Division, approximately 6,500 registered vendor records were transferred from Procure Plus to UNGM as part of the data-cleaning exercise. In view of the scale of implementation, the programme was extended to 30 June 2009.

57. New criteria were developed to encourage interested small vendors to apply for registration with the United Nations. In order to be fully registered on the United Nations roster, there are four levels of criteria. Vendors have to submit specific documentation based on each level of contractual value per transaction. As of 31 December 2008, 546 vendors had submitted applications for evaluation based on the new criteria. Of these, 233 applications were accepted. Given the relatively small number of new vendors registered as compared to the existing number of registered vendors, OIOS is of the view that the Procurement Division needs to consider other ways to expand the vendor database. *The Office of Central Support Services recognized the desirability of expanding the vendor database, but stated that it was also necessary to maintain appropriate internal controls in so doing. In other words, rapid expansion of the vendor database should not take priority over the need to ensure that appropriately qualified vendors are added.*

58. The Procurement Division and the Department of Field Support agreed to form a working group to initiate a pilot programme for field missions to revalidate approximately 58,000 vendor records stored in the Mercury database. Cleaning the field missions' records is important to ensure a reliable vendor database in the field, and also before transferring the data to the United Nations Global Marketplace. The start-up of the pilot programme was scheduled to start in May 2009.

D. Cycle time of procurement process cannot be reliably quantified

59. Owing to weaknesses in the Procurement Division's information systems, procurement process cycle times could not be reliably quantified. As a result, it was not feasible for OIOS to draw any conclusions on the cycle time. However, an OIOS review of eight contract files showed that the average cycle time between the date of requisition to the date of contract award was 11.3 months and ranged from 4 months to 17 months. The Procurement Division should periodically analyse the procurement data to assess the efficiency of the procurement process.

60. The Department of Management had recently conducted a study of the procurement cycle time, which the Procurement Division stated had identified areas to reduce cycle time. The recommendations of the study will be implemented in the near future.

V. Information resources

61. Information and communications technology (ICT) is a key component of the processes established in the Procurement Division. Controls in this area should

adequately address the risks to the reliability and security of data, systems and applications. The audit found that the Division's ICT domain is exposed to a high, unmitigated level of risk because information requirements and supporting technologies were not governed by clearly defined terms of reference; application controls were not adequate to ensure the integrity of data; and systems to analyse procurement data did not exist. OIOS considers the lack of an appropriate ICT system to be a high risk to procurement operations and governance. *The Procurement Division noted that a great deal of time, resources and tools had been invested by the Division to facilitate the implementation of ERP. It is currently not feasible to dedicate additional time, resources and tools to modify the current legacy IT system.*

62. The Procurement Division is supported by two core applications (Procure Plus and the Integrated Management Information System (IMIS)) and 17 ancillary applications. The systems and applications used to support the procurement function have evolved over time and as a result, the Division has a collection of fragmented legacy systems that no longer satisfy its functional needs and cannot be adequately integrated and updated in an efficient manner.

63. In response to the requirements of the International Public Sector Accounting Standards, the Secretariat is in the process of implementing an ERP system. This system will include a supply chain module, which will replace the core system, Procure Plus. No formal indication was provided to OIOS as to when the supply chain module of the new ERP system will be fully implemented. Although replacing the core application is expected in future, the observations below are relevant for the current system as well as the replacement system.

A. Need for a dedicated information and communications technology strategy and governance framework

64. The Procurement Division lacked an effective ICT strategy and governance framework to ensure that the procurement processes were adequately supported by its ICT systems and resources. The Division also lacked a dedicated committee to review and approve the strategy and requirements of the Division for the acquisition of ICT technologies and applications. OIOS found no evidence of a risk-management process within the Division to identify, monitor and mitigate ICT risks. For instance, the Division did not document the impact of the UNGM initiative, namely, to transfer vendor registration data into an integrated database, on its processes and did not analyse and document the expected impact, including risks arising from the planned implementation of the ICT-related initiatives such as ERP. In the absence of effective controls and processes, the Division may be unable to identify risks to its ICT and procurement operations. *The Procurement Division stated that a strategic plan was prepared for ERP in line with the ICT strategic plan formulated by the Office of Information and Communications Technology.* OIOS notes, however, that an ICT strategy should translate business strategy, business expectations, and current and future IT capabilities into an IT strategic plan and that the ERP plan is not a strategy, but rather a solution to achieving a business objective.

B. Need to improve controls pertaining to information and communications technology security, data integrity, and audit trails

65. The Procurement Division did not document its information security requirements, access controls and monitoring procedures, and thereby risked inadequate protection of information resources and assets. The Division also did not perform regular reviews to purge or deactivate users who were no longer authorized to access the systems and applications. *The Procurement Division explained that Procure Plus has documents for system administration pertaining to information security and access control.* However, when requested by OIOS, the Division did not provide evidence of documented standard operating procedures on access control and monitoring procedures. A system administration manual is an operational document on how to effectively configure and administer an application. The documentation provided by the Division, for instance, did not define user roles and profiles to ensure internal checking within the application. Furthermore, effective monitoring of system access is essential to preventing unauthorized and inappropriate use of an application system. The Division also did not provide any evidence that these control mechanisms were documented.

66. Procure Plus lacked adequate controls throughout the life cycle of the procurement process. The application had limited validation controls, key fields were not populated, date fields were not always reliable, and the date formats within the systems were in character format instead of date format. *The Procurement Division stated that it had insufficient resources to undertake an assessment of the control gaps in Procure Plus and to implement compensating controls, pending implementation of the ERP system.* OIOS noted that Procure Plus does not have to be reprogrammed; instead compensating controls should be established to mitigate the risks created as a result of the control limitations within Procure Plus.

67. The Procurement Division also lacked a common repository of data and had no automated data interfaces between its applications and IMIS. That condition led to duplication of efforts, delayed updates and errors. Furthermore, the manual interfaces were not consistently checked to ensure that data were complete, accurate and authorized. For example, there was no interface in the Contract Tracking System for users to input contract amounts or changes to contract amounts, and the currency table from IMIS was manually uploaded into Procure Plus on a daily basis. *The Procurement Division explained that the new Contracts Administration Tracking System will allow procurement officers to input and manage their own contracts. Thus, double entry by the IT team will be avoided.*

C. Need to implement procedures to manage procurement data

68. The Procurement Division did not develop procedures to systematically monitor, query and analyse procurement data to identify potential risks and cases of non-compliance with established procedures. The Division also did not have automated tools to perform vendor due diligence. Procure Plus did not contain automated controls for predetermined limits or thresholds to trigger exceptions, and the application did not generate an audit trail and logs of transactions. *For monitoring purposes, the Procurement Division stated that it had a series of*

automatic reports covering critical aspects of procurement such as contracts, vendors, and so on, which were routinely sent to various recipients. Although OIOS was given a list of reports generated within the Division, these reports were limited and did not adequately cover risks, compliance and vendor due diligence. OIOS found the limitations to be caused by inadequate validation controls and the incompleteness of the data contained within the application. For instance, the Procurement Division was unable to provide information on cycle timeline from the date of requisition to the award of contract. Consequently, in the opinion of OIOS, the Division lacked a consistent and systematic programme to monitor, query and analyse performance and processes against defined thresholds, supported where necessary with automated software.

(*Signed*) Inga-Britt **Ahlenius**
Under-Secretary-General for Internal Oversight Services

Annex

Audit of procurement management in the Secretariat (AH2008/513/01): recommendations made to the Department of Management to mitigate high-risk areas

Recommendation	*Accepted (Yes/no)*	*Risk category*
The Department of Management should clarify the accountability of the Procurement Division and the Department of Field Support in monitoring the delegation of procurement authority to field missions.	Yes	Governance
The Department of Management should define the terms of reference of the contract review committees, the Headquarters and Local Committees on Contracts (HCC/LCC), including their reporting lines.	Yes	Governance
The Office of Central Support Services should ensure that there is a proper monitoring system at Headquarters to review the performance of (a) the field mission LCCs in view of the increased Headquarters Committee on Contracts threshold to $500,000; and (b) the LCCs of the United Nations Office at Geneva, the United Nations Office at Nairobi and the United Nations Office at Vienna in view of delegation of unlimited procurement authority to the offices away from Headquarters.	Yes	Governance
The Office of Central Support Services should reconsider the continued need for the authority currently delegated to the Director of the Procurement Division for short-term air charter contracts up to $5 million (and the waiver of HCC review for such cases). If needed, a review mechanism should be established to ensure contracts are awarded in the best interests of the Secretariat.	No	Governance
The Procurement Division should develop key performance indicators against which its performance could be measured, including bidder participation and processing times for technical and financial evaluations, HCC approval, award of contract and signing of contract, and so forth.	Yes	Governance

Recommendation	Accepted (Yes/No)	Risk category
The Office of Central Support Services and the Department of Field Support should form a working group to develop and execute periodic procurement strategies. The Office of Central Support Services should also ensure that senior managers are involved in this process in order that risks are managed strategically in a systematic manner.	Yes	Strategy
The Office of Central Support Services should analyse the reasons for the high number of procurement cases that result in ex post facto/partial ex post facto/ exigency cases, and include in the overall procurement strategies specific actions to control exceptions to competitive procedures.	No	Strategy
The Procurement Division should analyse the procurement data to develop strategies for various types of commodities and based on the regions where the United Nations operates in order to improve the participation of vendors from developing or transitioning economies.	No	Strategy
The Procurement Division should analyse its relationship with the top contractors in order to develop a strategy addressing the operational and financial risks arising from its dependence on them and also explore opportunities for efficiencies and savings based on economies of scale.	Yes	Strategy
The Procurement Division, in consultation with major requisitioners, should analyse vendor participation in relation to specific commodities and develop a strategy to improve competition.	Yes	Strategy
For each bid, the Procurement Division should require data inputs into Procure Plus of all vendors who responded and the amount of their bid and should develop management reports that extract this information. This data input also should be a requirement in the impending ERP system.	No	Strategy
The Procurement Division should strengthen the procedures for commercial evaluations and require that a formal commercial evaluation report be made; also, for large contracts financial evaluations should be done by an evaluation committee rather than by a single procurement officer.	Yes	Operational
The Procurement Division should develop detailed guidelines on how to conduct negotiations. The	Yes	Operational

Recommendation	Accepted (Yes/No)	Risk category
guidelines should include a requirement that a negotiation strategy document be prepared and approved at the appropriate level prior to negotiations. The strategy should outline the goals of the negotiation, the desired outcomes and acceptable alternatives.		
The Procurement Division, in consultation with the Office of Legal Affairs, should amend the Procurement Manual to clarify under what circumstances suspended or debarred vendors may be allowed to continue with ongoing contracts.	No	Operational
The Department of Management and those requisitioning departments which generate large-value requisitions, such as the Department of Field Support, should ensure that the acquisition plan focuses on materiality and relevance. The preparation of acquisition plans should cover all major projected requirements and consider risks to the achievement of the plans. This exercise should also include a mechanism to monitor actual requisitions versus the plan on a periodic basis.	No	Operational
The Procurement Division should develop guidance for complex procurement contracts that will interpret salient contract clauses and provide guidance on how they should be implemented in practice.	No	Operational
The Procurement Division should enhance internal controls to ensure that the data on not-to-exceed (NTE) utilization of the contracts are captured in the Contract Tracking System, and that the data are reviewed periodically to determine the reasons for any under- or over-utilization of contracts, and necessary action is taken for the effective use of the contract.	Yes	Operational
The Procurement Division should formalize its information and communications needs in an information and communications technology (ICT) strategic plan aligned with the procurement operational strategy.	No	Information resources
The Procurement Division should establish an ICT committee, composed of representatives from functional users and ICT staff. The committee should be responsible for providing direction and control over ICT projects, investments and services. The Division should assign clear responsibilities for the development, implementation and monitoring of change-management procedures.	No	Information resources

Recommendation	*Accepted (Yes/no)*	*Risk category*
Pending the implementation of the new Enterprise Resource Planning (ERP) system, the established ICT committee should define and oversee an acquisition process composed of: a project management framework; change control process; and business case preparation and approval process.	No	Information resources
Pending the implementation of the new ERP system, the Procurement Division should develop and document the information architecture for its core processes, and allocate ownership of data and responsibilities for the maintenance and updating of all documentation pertaining to the systems and applications in use. In addition, the Division should develop and maintain a data dictionary of all its applications.	Yes	Information resources
Pending the implementation of the new ERP system, the Procurement Division should document its information security requirements and procedures, with particular regard to access control, password change enforcement, and monitoring parameters for all ICT systems supporting the procurement process.	Yes	Information resources
Pending the implementation of the new ERP system, the Procurement Division should undertake an assessment of the control gaps in Procure Plus, and implement compensating controls based on manual checks and reports. Furthermore, the Division should ensure that the requirements definition for the supply-chain module of the new ERP system contains adequate application controls for authorization, input, processing, output, migration, extraction and archiving.	No	Information resources
Pending the implementation of the new ERP system, the Procurement Division should implement control procedures to verify data received from other applications, and confirm their accuracy and completeness before being uploaded into its applications.	No	Information resources
Pending the implementation of the new ERP system, the Procurement Division should develop control requirements and procedures to systematically monitor, query, and analyse procurement data to identify potential risks; identify cases of non-compliance with United Nations rules and regulations; and perform vendor due diligence.	No	Information resources

Note: OIOS reiterates the rejected recommendations and requests the Department of Management to reconsider them.

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The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development

Activities of the International Commission against Impunity in Guatemala

Report of the Secretary-General

Summary

In its resolution 63/19, the General Assembly requested the Secretary-General to report on the work of the International Commission against Impunity in Guatemala. During the reporting period, the Commission made significant progress in key areas of its mandate, including criminal prosecutions and investigations, as well as in obtaining the approval of important legal reforms. Most importantly, the Commission contributed to raising awareness among the Guatemalan population of the need to end impunity. On the technical side, the Commission made progress in strengthening Guatemalan justice institutions. Its actions before the courts earned the Commission wide media coverage. As a sui generis, non-United Nations body, the Commission also encountered important operational challenges.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 63/19, which requested the Secretary-General to submit to the Assembly at its sixty-fourth session a report on the work of the International Commission against Impunity in Guatemala. It follows the letter dated 27 October 2008 from the Secretary-General to the President of the General Assembly (A/63/511), in which he updated the Assembly on the work of the Commission. The present report provides an overview of the ongoing work of the Commission, including its results, the challenges it faces and the broad outline of the Commission's strategy for the next two years. Due to the sensitive character of some of the investigative work conducted by the Commission, the present report is circumscribed to activities of a public nature and does not delve thoroughly into the investigative casework of the Commission.

II. Background

2. The International Commission against Impunity in Guatemala was established at the request of the State of Guatemala as a non-United Nations organ funded through voluntary contributions. It was created through an agreement between the United Nations and the Government of Guatemala signed on 12 December 2006, which was ratified by the Guatemalan Congress on 1 August 2007. The agreement entered into force on 4 September 2007, with a two-year mandate. In a letter dated 24 March 2009, the Minister for Foreign Affairs of Guatemala requested that the Secretary-General agree to extend the mandate of the Commission for a two-year period. On 15 April 2009, the Secretary-General confirmed the extension of the Commission's mandate for a period lasting until 4 September 2011. The extension agreement established through this exchange of letters was ratified on 16 July 2009 by the Guatemalan Congress. The Secretary-General announced the appointment of Carlos Castresana of Spain as Commissioner of the International Commission against Impunity in Guatemala on 14 September 2007 and has renewed his appointment as Commissioner in light of the extension of the Commission's mandate.

3. The key goal of the Commission is to support, strengthen and assist Guatemalan State institutions responsible for investigating and prosecuting crimes allegedly committed by illegal security forces and clandestine security organizations, as well as other criminal conduct related to these entities. It seeks to achieve this goal through: (a) the identification of illegal security groups and clandestine security structures; (b) assistance to the State in the dismantling of such groups and structures; (c) promotion of investigations, criminal prosecutions and punishment of crimes committed by such groups and structures; and (d) through recommendations to the State concerning public policies for eradicating and preventing the re-emergence of such groups and structures. The Commission also has the power to file criminal and/or administrative complaints with relevant authorities against civil servants who contribute to impunity by interfering with the Commission's exercise of its functions or powers.

4. While remaining an international body, the Commission investigates and promotes criminal prosecutions within Guatemala's national justice system. The Commission thus plays a key role in strengthening State institutions responsible for

criminal prosecutions and the procedural and substantive activity derived from the Commission's initiatives remains primarily the responsibility of the Guatemalan State. The Commission can file criminal complaints in Guatemala and join criminal proceedings as a complementary prosecutor (*querellante adhesivo*).

III. Activities

5. In his letter to the President of the General Assembly (A/63/511), the Secretary-General reported on the initial work of the Commission, which involved coordination with the Commission's Guatemalan counterparts and the establishment of collaborative relations. After organizing its operational structure, providing for necessary physical space and basic security, as well as establishing contacts with governmental counterparts, the Commission has focused on its key substantive tasks — namely, criminal investigations and involvement in prosecutions, legal reform proposals and technical assistance. At the same time, the Commission has disseminated information on its activities to civil society organizations and the media.

6. The Commission's activities in Guatemala are set in a context of strong concern about public insecurity and crimes that, more often than not, go unpunished. Through its work, the Commission has responded to national clamour about the need to combat impunity, a problem that has become a leading concern for all sectors of Guatemalan society. The Commission's activities have helped foster hope that the scourge of impunity can be successfully fought. The positive results of the Commission are gradually instilling hope in public opinion that it is possible not only to combat impunity but also to defeat it.

A. Investigations and casework

7. A Special Prosecutor's Office for the Commission was created in September 2008 and installed in the Public Prosecutor's Office, following a bilateral cooperation agreement signed between the Guatemalan Public Prosecutor's Office and the Commission on 27 February 2008. The Special Prosecutor's Office investigates cases within the scope of the Commission's mandate and receives close assistance from the Commission. The Commission's international investigators and lawyers support and provide logistical assistance to these investigations.

8. The Commission and its Special Prosecutor's Office have achieved important results in a number of investigations in collaboration with the Public Prosecutor's Office and the National Civilian Police. In a case involving the incineration of a Nicaraguan bus in which 16 people died, 11 suspects were identified with the assistance of investigators of the Commission, and two of those suspects have been detained. The so-called "Zacapa case", in which 12 people are accused of taking part in a gun battle on 25 March 2008 between rival groups of drug traffickers, is currently in the pre-trial phase. Successful investigations leading to arrests and prosecutions have provided a model for cooperation and coordination between the Commission and the Public Prosecutor's Office.

9. To date, the Commission has been accepted as a complementary prosecutor in nine cases, including the above-mentioned Zacapa case. High-level cases, including

a case against Alvaro Matus, the former head of the Crimes against Life Unit of the Public Prosecutor's Office, and a case against former President Alfonso Portillo, have placed the Commission in the public spotlight and have underscored that investigations and accountability are feasible in Guatemala, even when powerful interests are at stake.

10. At the same time, the Commission has faced repeated obstacles and challenges seeking to contest its legal ability to participate in investigations and prosecutions. Such challenges have primarily involved a procedure known as *amparo* (providing habeas corpus and constitutional guarantees), by which individuals subject to judicial proceedings question the validity of the Commission's involvement on constitutional grounds. Although *amparos* have introduced numerous delays and appeals in the judicial process, the Commission is nonetheless making steady progress in investigations and prosecutions. The Commission has also asked for a reform of the current legislation regulating the *amparo* procedure, so that it may not be used to delay or obstruct justice.

11. At the request of the Guatemalan authorities, the Commission is also investigating the 10 May 2009 murder of attorney Rodrigo Rosenberg. The murder, which took place in a context of heightened concern for public security, unleashed a delicate political crisis. The day after the murder, a video tape circulated throughout Guatemala in which the late Mr. Rosenberg alleged that the President, the First Lady, the President's private secretary and a businessman were involved in his assassination and in the deaths of two of his clients. The Commission's involvement in the investigation of the Rosenberg assassination has helped strengthen trust in the justice system. Against a background of social mobilization following the allegations surrounding the Rosenberg murder, the involvement of the Commission also contributed to the restoration of stability. The investigation is ongoing and has produced important results. On 11 September 2009, six members of a criminal group allegedly responsible for carrying out the Rosenberg murder were arrested. In subsequent days, four more suspects were arrested.

B. Legal reform proposals

12. In keeping with its mandate, the Commission has recommended the adoption of public policies that will enable the eradication of clandestine security organizations and prevent their re-emergence. To this end, the Commission has submitted two sets of legal reform proposals. The first package of suggested reforms was presented in October 2008, including proposals on issues such as: (a) arms and ammunitions; (b) the much abused "law of *amparo*"; (c) the law on the immunities of public officials; (d) criminal procedures; (e) the use of audiovisual testimony of witnesses and experts; (f) witness protection; and (g) the effective collaboration of defendant-informants. The Commission's legal reform proposals resulted in congressional approval of a new Law on Arms and Ammunitions and a Law to Strengthen Criminal Prosecutions.

13. A second package of legislative reforms was presented to the President of Congress in June 2009, including proposals in the following areas: (a) legislation on trafficking in persons; (b) the fight against corruption; (c) disciplinary measures in the criminal justice sector; and (d) international judicial cooperation in criminal matters. On 4 August 2009, Congress approved two additional legislative initiatives

from the Commission's reform proposals: a Law on Criminal Jurisdiction in High-Risk Proceedings, which establishes a legal basis for specialized courts with expanded jurisdiction to hear high-impact cases; and a reform of the Law against Organized Crime, which allows for a reduction of sentences for members of criminal groups who collaborate in the prosecution of organized crime cases.

C. Expert assistance

14. The Commission has provided technical assistance in restructuring the national witness protection programme, including through the training of 48 recent police academy graduates who make up the new personal protection unit of the witness protection programme. The Commission has also worked with the Public Prosecutor's Office on the terms of the new witness protection regulation, which modifies the operational structure of the witness protection programme, establishing witnesses' rights and providing for improved housing conditions. The new regulation was adopted by the Public Prosecutor's Office on 4 May 2009.

15. On 24 November 2008, the Inter-institutional Agreement for the Establishment and Implementation of a Wire-Tapping System was signed by the Public Prosecutor's Office, the Ministry of the Interior and the Commission, in line with Commission recommendations. The Commission is assisting in the training of officials in charge of the Communications Monitoring Centre, which is under the direction of the Public Prosecutor's Office and the Ministry of the Interior. The wire-tapping system has been operational since June 2009 and should be an important asset in the fight against organized crime.

16. More broadly, the Commission is providing capacity-building for the Special Prosecutor's Office and other units within the Public Prosecutor's Office.

D. Other activities

17. The Commission has helped to identify staff in the Public Prosecutor's Office and in the National Civilian Police who were obstructing progress in investigations and legal proceedings. Since the Commission began its activities, more than 1,500 members of the National Civilian Police and some ten Chief Prosecutors and other members of the Public Prosecutor's Office have been suspended or dismissed.

18. The Commission's proposals have also contributed to the signing of a National Agreement for the Advancement of Security and Justice in Guatemala, the objective of which is to define a long-term policy to combat crime. This policy is based on a wide political consensus to make the fight against crime a State priority that transcends the current administration. Concerns exist, however, that the agreement lacks an agenda and budget. The Commission is promoting the effective implementation of the Agreement.

19. Impartial courts are essential if Guatemala is to improve the performance of its system of justice. Similarly, Guatemalan courts will have the final word with regard to the criminal cases in which the Commission is involved. For this reason, the Commission has supported the approval of a Law on Nominating Committees to render the process for the appointment of Supreme Court and Appellate Court judges more transparent. The law was approved on 21 May 2009. Throughout the

appointment process, the Commission has played an active and public role advocating for the selection of suitable magistrates to the Supreme Court, whose members were selected by the Guatemalan Congress on 30 September 2009.

20. The Commission signed a cooperation agreement on 13 February 2009 with the United Nations Children's Fund to carry out studies in favour of children and adolescents, particularly with regard to crimes committed against children and adolescents in the context of the activities of illegal security forces and clandestine security organizations.

IV. Structure, composition and financing

21. The Commission is composed of the following six units: the Office of the Commissioner, the Security Unit, the Administration Unit, the Investigation Unit, the Information and Analysis Unit and the Legal Unit. Currently, the Commission's staff is comprised of 158 officials out of a total of 194 budgeted staff. Of the Commission's total staff, 43 are women and 115 are men. That is, 27 per cent are women and the remaining 73 per cent men. If analysed without taking into account the Security Unit, the percentages shift to 40 per cent women and 60 per cent men. In order to balance these percentages, actions were initiated with several Governments to incorporate female security officers into the Commission. Officials from 24 countries work for the Commission, and the number of Guatemalan staff members has reached 44.

22. The total amount of funds received by the Commission since its establishment has reached $19,495,560, while expenditures registered for 2007 and 2008 were $11,300,042 with a balance of $8,195,518 for 2009. This amount, in addition to funds pledged to date, provides $11,796,458 in available funds for 2009 or 67.74 per cent of the total budget for 2009, which is estimated at $17,414,700.

V. Observations

23. The Commission maintains positive collaboration with Guatemalan Government counterparts as well as with opposition political parties, civil society organizations and the media. In July 2009, 35 civil society organizations gathered to express their unconditional support for the work of the Commission. The strong relations between the Commission, diplomatic representatives and international organizations located in Guatemala testify to the high level of international support, both financial and political, that the Commission has received since its inception.

24. Frequent personnel changes within Government institutions, particularly in the justice and security sector, have proved to be a challenge for the interaction of the Commission with the authorities. Guatemala has had seven Directors of the National Civilian Police since 2004, four of whom have held office since the current Government took office. There have also been repeated changes in the leadership of the Ministry of the Interior (four Ministers of the Interior since the start of the Commission's mandate), a key counterpart of the Commission, making it increasingly difficult to maintain a high degree of coordination.

25. Problems within the judicial system continue to hamper the fight against impunity. During the reporting period, important steps forward were often followed

by setbacks. In the section on casework, above, the frequent use of dilatory measures to prevent progress in prosecutions through the use of the *amparo* procedure is described. In addition, some judges appear to be subject to external influence to the detriment of justice. In June 2009, a judge ordered the release of four suspected members of the "Zetas", the armed branch of a Mexican cartel, on a low bail and dismissed 10 of 12 charges filed against them. Yet another judge had turned down, without proper justification, the Commission's request to enter the case against former President Alfonso Portillo as complementary prosecutor, a decision that was overturned. To date, the Commission has requested the removal of immunities of one judge so that she may be tried as a private citizen for obstruction of justice and other crimes.

26. The Commission has insisted on the urgent need to create specialized courts located in Guatemala City to hear high-impact cases, in the belief that specialized courts help provide greater security for judges and ensure impartial decisions. The need for such courts has been made evident in several cases that were transferred repeatedly between regional courts and the capital due to the refusal of regional courts to hear the cases. Security and intimidation of judges plays a factor in such circumstances, as criminal networks are better able to exploit weaknesses in the judicial system outside Guatemala City. The Supreme Court approved a resolution on 21 May 2009 under which the Criminal Chamber of the Supreme Court can transfer the most complex and dangerous cases from courts in the interior of the country to courts in Guatemala City, and Congress approved the Law on Criminal Jurisdiction in High-Risk Proceedings on 4 August 2009. Challenges remain for the implementation of the specialized courts. In particular, there is an urgent need to create a maximum security judicial and penitentiary facility.

27. As the profile of the Commission has increased in Guatemala, so have the security risks facing the Commission. The types of crime that the Commission investigates often relate to activities of powerful criminal networks, some of which are entrenched within Guatemalan institutions. Ensuring the safety and security of the Commission's staff is therefore one of the greatest challenges the Commission faces. Moreover, a number of judges, prosecutors and witnesses involved in the Commission's investigations and prosecutions face threats and are at great risk. Their security is of grave concern and poses a challenge to the functioning of Guatemala's institutions of justice.

28. The Commission's status as a non-United Nations body has created unprecedented operational challenges for both the Commission and the United Nations Secretariat. The Commissioner underscores that the Commission's non-United Nations status has made it difficult to recruit experienced professionals from both inside and outside the United Nations system. The Commission further believes that the lack of United Nations contracts has resulted in incomplete benefits and entitlements for its staff.

29. Under the Commission's founding agreement, and at the insistence of the Guatemalan Government, Guatemalan staff of the Commission do not enjoy immunities for the activities they perform as a result of their work for the Commission. They are therefore at a greater risk than international staff. This is of particular concern in the case of national attorneys who represent the Commission in Guatemalan courts.

30. To address the physical protection of the staff of the Commission, a memorandum of understanding has been developed with the Department of Safety and Security of the Secretariat, providing a framework for collaboration and the Commission will continue to make efforts to improve coordination with the Guatemalan Ministry of the Interior and the National Civilian Police to address concerns regarding potential threats. A draft memorandum of understanding on security is pending approval by the Government of Guatemala. The Commission will also continue to insist that effective protection is provided to judges, prosecutors and witnesses who are at risk.

Next steps

31. The Commission's main objective over the next year will remain to solve serious criminal cases of impunity related to clandestine security apparatuses. It aims to do so through the maximum possible coordination with national law enforcement authorities in order to build their own capacity and demonstrate that clandestine security apparatuses can be successfully dismantled. The Commission will work to improve the functioning of the judicial system through the promotion of transparent procedures in the selection of Supreme Court and Appellate Court judges following the procedures laid out in the recently approved Law on Nominating Committees. Only with a committed judiciary will the justice system be able to function effectively to eliminate corruption and impunity.

32. The Commission will promote the urgent application of the Law on Criminal Jurisdiction in High-Risk Proceedings and the establishment of the specialized courts. The Commission will work with the Minister of the Interior and the Supreme Court to advance this initiative. To ensure further advances in the application of justice, the Commission will remain closely engaged with the President of Congress and political party leaders in an effort to promote the implementation of the Commission's legal reform proposals. Additionally, the Commission will elaborate new legal reform proposals, as needed.

33. During the current period of mandated activities, the Commission is expected to develop a consolidation strategy to ensure that its capacities are transferred to national institutions and that sustained international assistance continues to build on those capacities.

34. The United Nations Secretariat and the Government of Guatemala are discussing the most appropriate way in which to resolve the operational challenges described in the present report, which derive in great measure from the sui generis nature of the Commission as a non-United Nations body.

35. I would like to conclude by expressing my sincere gratitude to Commissioner Castresana and to the staff of the Commission for their dedication and work to support Guatemala's justice institutions and to fight impunity.